

# Notice of Allowability

Application No.

10/757,237

Examiner

Vincent Lai

Applicant(s)

DEWITT ET AL.

Art Unit

2181

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief submitted 15 January 2007.
2. ☒ The allowed claim(s) is/are 1-21.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 3/30/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statements (IDS) submitted on 1/14/2004 and 3/30/2007 were considered by the examiner.

### EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

#### **Claim 6:**

The method of claim 1, wherein the plurality of branch statistics is stored in a performance instrumentation shadow cache.

#### **Claim 9:**

The apparatus of claim 8, wherein the plurality of branch statistics is used to make branch predictions in the application code.

Art Unit: 2181

**Claim 13:**

The apparatus of claim 8, wherein the plurality of branch statistics is stored in a performance instrumentation shadow cache.

**Claim 20:**

The computer program product of claim 15, wherein the plurality of branch statistics is stored in a performance instrumentation shadow cache.

It is noted that on page 4 of the Appeal Brief submitted on 25 January 2007 indicates such amendments would be made

***Allowable Subject Matter***

3. Claims 1-21 are allowed.

The primary reasons for allowance of claims 1, 8, and 15 in the instant application rest at least in the combination with the inclusion of the limitation that "[identifying] a plurality of branch instructions for application code being compiled...the plurality of hardware counters to autonomically count all of the plurality of branch instructions of branch instructions that are executed in parallel." The prior art of record neither anticipates nor renders obvious the above-recited combination.

It is noted that arguments presented by the Applicant in the Appeal Brief submitted on 25 January 2007 indicated that identification of branch instructions that are

Art Unit: 2181

executed in parallel is done at time of compilation. Applicant was able to explain this interpretation of the claims whereas the Examiner had a different interpretation initially.

Because claims 2-7, 9-14, and 16-21 depend directly or indirectly on any of the claims 1, 8, and 15, these claims are considered allowable for at least the same reasons noted above with respect to claims 1, 8, and 15.

#### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Lai whose telephone number is (571) 272-6749. The examiner can normally be reached on M-F 8:00-5:30 (First BiWeek Friday Off).

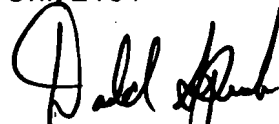
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2181

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

vi  
May 25, 2007

Vincent Lai  
Examiner  
Art Unit 2181



**DONALD SPARKS**  
**SUPERVISORY PATENT EXAMINER**